IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeals) Nos.416 and 417 of 2004

Commissioner of Income-tax-IV,
Chennai. Appellant

v.

M/s. S.A.S. Enterprises,
3 Mangesh Street,
T.Nagar, Chennai 17. Respondent

Tax Case Appeals filed against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench in ITA Nos.176 & 177/Mds/96 dated 11.11.2003, and letter dated 20.11.95 in ITA 580/93-94 of the order of the Commissioner of Income Tax Madras-34 and in IT/WT/GT/Appeal.No.133/93-94 City Circle IV dated 20.11.95 from the Commissioner of Income Tax (Appeals) Madras-34 and order dated 31.12.93 of the order of the Assistant Commissioner of Income Tax, City Circle IV (1)(Inv)Madras-6 in Assessment Order dated 26.3.93 in PAN.No.GIR.No.12315-S.

For appellant : Mr.J.Narayanasamy,
Jr. Standing Counsel for IT Dept

For respondent : Mr.V.S.Jayakumar

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JUDGMENT

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

The appeals are filed against the order of the Income Tax Appellate Tribunal dated 11.11.2003 by framing the following question of law :

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that collection of contingency deposit against payment of sales tax would not form part of the income?"

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2. The facts, as culled out from the statement of facts, are as follows: The relevant assessment years are 1990-91 and 1991-92. The assessee, a partnership firm is engaged in the business of construction. During the relevant years, the assessee had collected contingent deposit from the persons to whom the flats were sold towards payment of sales tax as the payment of sales tax on civil works contract was in dispute at that stage. The amount so collected was kept by the assessee as contingent deposit and not paid over to the Government towards sales tax liability. The assessing officer made an addition treating the contingent deposit as a trading receipt. Aggrieved by the order of assessment, the assessee filed appeals before the Commissioner of Income Tax (appeals), who allowed the appeals holding that the contingent deposit should not be treated as a fund belonging to the assessee for being included in the total income. The revenue carried the matter on appeal. The appellate Tribunal upheld the order of the Commissioner of Income Tax (Appeals). Not satisfied with the order of the Tribunal, these appeals are filed framing the above stated question of law.

3. We heard the learned counsel on either side and perused the materials available on record.

4. In this case there is no controversy about the fact that the respondent assessee had collected amounts for the purposes of discharging the assessee's statutory liability of payment of sales tax, of course, the liability was disputed by the assessee. Even if the assessee without keeping it in a deposit, had paid over the amount towards sales tax to the State Government, it would still be open to the respondent assessee to seek refund if the respondent is able to succeed in its stand that no sales tax is payable by it, and repay the same to the persons from whom the amount was collected. The fact that assessee had chosen to adopt the device of labelling the amount collected towards sales tax liability as contingent deposit would not make any difference. The fact remains that the respondent assessee received the amount from its customers for the purpose of discharging the sales tax liability. The further fact that the amount had not been paid over to the State Government dis-entitles the assessee from claiming deduction. The persons who paid the amount did not derive any benefit from the device adopted by the assessee as they were made to pay the amount and the amounts were retained and used in the normal course of business by the assessee. The receipt which is a trading receipt in its true character, cannot be regarded otherwise merely it is labelled as contingent deposit by the assessee.

5. In an identical matter in the case of CIT v. Southern Explosives Company Ltd., Madras,(2000) 242 ITR 107, the assessee collected sales tax from its customers and paid over a part of the amount and retained a part of the amount as contingent deposit on the ground that the assessee was liable to pay only reduced rate of tax. The part of the amount which has been kept in the deposit by the assessee as contingent deposit was treated as trading receipt by the assessing officer. In those circumstances of the case, this Court had an occasion to decide the issue whether the collection of deposit against sales tax at 4% would

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not form part of the assessee's income. This Court held that the true character of the receipt must be judged with reference to reasons for the collection and liability for meeting which the collection was made. When the liability was a statutory liability, which the assessee was required to meet and for meeting which it was by the statute or authorities permitted to collect the amount required from its customers, the true character of the collection is a trading receipt. By calling a part of the amount deposit it cannot be said that the assessee had constituted itself as a trustee and therefore, the amount received were required to be regarded as part of its trading receipt. The Court further held that it would be wholly unjust if the assessee were to be permitted to collect the amount from the customers as amounts payable towards sales tax and still claim that it is not trading receipt. If and when the amounts collected were refunded to the persons from whom the collection has been made, the assessee could claim deduction in the year in which such refund was effected. The above said judgment would squarely cover the issue on hand.

6. In view of the discussion made above and in the light of the judgment above referred to, the appeals are allowed by answering the question of law in the affirmative in favour of the revenue and against the assessee.

mf

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Income Tax Appellate Tribunal,
   III Floor, Rajaji Bhavan,Besant Nagar,Chennai.

2. The Income Tax Appellate Tribunal Chennai Bench 'C'
   Madras-34.

3. The Commissioner of Income Tax (Appeals) Madras-34.

4. The Assistant Commissioner of Income Tax,
   City Circle IV(1) Investigation.

+1 cc to M/s.Pushya Sitaraman, Advocate Sr.No.51678.

SSV(CO)
dcp/17.9

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